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P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
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DANN, DORFMAN, HERRELL & SKILLMAN
1601 MARKET STREET
SUITE 2400
PHILADELPHIA, PA 19103-2307

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APR 28 2005

OFFICE OF PETITIONS

In re Application of :
Muir, et al. :
Filed: February 23, 2004 : ON PETITION
Application No. 10/784,721 :
Dkt. No.: 3440-P02516US1 :

This decision is in response to the "PETITION UNDER 37 C.F.R. §1.182 FOR INCLUDING IN THIS APPLICATION OMITTED DRAWINGS CONTAINED IN THE PARENT APPLICATION," filed October 14, 2004, requesting that the instant application be accorded a filing date of February 23, 2004 and that the drawings submitted herewith be entered into the record.

The petition is **DISMISSED**.

The application was submitted February 23, 2004. On September August 13, 2004, , the Office of Initial Patent Examination mailed a Notice of Incomplete Nonprovisional Application ("Notice"). The Notice indicated that the application had not been accorded a filing date because the application was deposited without drawings as required under 35 USC 113 (first sentence). The Notice indicated the filing date of the application would be date of receipt of the omitted items. Any assertion that the omitted items were in fact submitted or are not necessary for a filing date must be by way of petition.

Petitioners argue that the instant application "omitted Figures 1-5 of the drawings" and that "Figures 1-5 were contained in the parent '543 application, which was duly incorporated by reference in the '721 application at the time of its filing."

As stated in MPEP 601.01(f), it is the practice of the PTO to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary for an understanding of the invention under 35 USC 113 (first sentence).

Moreover, MPEP 601.01(f) states that a nonprovisional application having at least one claim, or a provisional application having at least some disclosure, directed to the subject matter discussed

above for which a drawing is usually not considered essential for a filing date, describing drawing figure(s) in the specification, but filed without drawings will be treated as an application filed without all of the drawing figures referred to in the specification as discussed in MPEP 601.01(g), so long as the application contains something that can be construed as a written description and the names of all the inventors. Should the Technology Center determine that drawings are necessary under 35 U.S.C. 113 (first sentence) the filing date issue will be reconsidered by the USPTO.

A review of the official file reveals that the instant application includes at least one method claim. As it is USPTO practice to treat a non-provisional application that contains at least some disclosure of a process or method as an application for which a drawing is not necessary, the application, as submitted, was entitled to a filing date of February 23, 2004. Thus, the instant petition to accord the application a filing date is unnecessary and the Notice of Incomplete Application mailed August 13, 2004 was mailed in error and is hereby withdrawn.

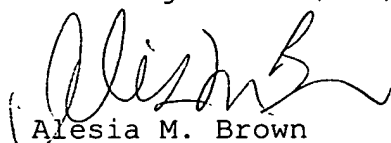
The application will be processed with only the papers present on February 23, 2004, without drawings as part of the original disclosure.

It is noted that the instant petition included a second preliminary amended addressing the matter of admission of the drawings. Said amendment will be addressed by the appropriate group art unit in due course.

No fee is due in connection with this matter. A refund of \$130.00 has been requested on petitioners' behalf from the Finance Office, Refund Section.

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of February 23, 2004 using only the papers present on that day.

Telephone inquiries related to this decision may be directed to the undersigned at (571) 272-3205.


Alesia M. Brown
Petitions Attorney
Office of Petitions